

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

Cindy Nesbeth :
302 Addison Road :
Stroudsburg, PA 18360 : # _____
Plaintiff :
v. :
Walmart Stores East, LP :
390 Highridge Park Road :
Pottsville, PA 17901 :
And :
Wabash National Corporation :
1000 Sagamore Parkway S :
Lafayette, IN 47905 :
Defendants :

COMPLAINT

PARTIES

1. Plaintiff, Cindy Nesbeth, is a resident of the Commonwealth of Pennsylvania, residing at the address listed in the caption of this Complaint.
2. Defendant, Walmart Stores East, LP, is a corporate entity authorized to conduct business in the Commonwealth of Pennsylvania, and regularly conducts business in Pottsville, with a business address listed in the caption of this Complaint.
3. Defendant, Wabash National Corporation, is a corporate entity authorized to conduct business in the Commonwealth of Pennsylvania, and regularly conducts business in Pottsville, with a business address listed in the caption of this Complaint.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and subject matter of this Civil Action-Complaint in that the Plaintiff is a citizen of Pennsylvania and the Defendant, upon information and belief is a corporate entity with its principal place of business in Pennsylvania and Indiana and the amount in controversy in this case, exclusive of interest and costs, exceeds the sum of \$75,000.

5. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1331(a) (1) and (2) in that this is a judicial district in which a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in this judicial district.

FACTS

6. On or about May 6, 2017, at or about 1:30 p.m., Plaintiff, Cindy Nesbeth, was the operator of a motor vehicle, which was traveling in the Walmart Distribution Center, in Pottsville, PA.

7. At or about the same date and time, Defendant, Unknown Driver, was the operator of a motor vehicle, owned by Defendant, Walmart Stores East, LP and Wabash National Corporation, which was traveling in the Walmart Distribution Center, at or around the aforementioned intersection and/or the location of the Plaintiff's vehicle.

8. At or about the same date and time, Defendants' vehicle was involved in a collision with Plaintiff's vehicle.

9. At all times relevant hereto, Defendant, Unknown Driver, was operating the aforesaid Defendant Walmart Stores East, LP and Wabash National Corporation's vehicle as Defendants' agent, servant and/or employee, acting within the scope of his agency.

10. The aforesaid motor vehicle collision was the result of Defendant, negligently, recklessly and/or carelessly, operating his vehicle in such a manner so as to strike Plaintiff's vehicle.

11. The aforesaid motor vehicle collision was a direct result of the negligence, carelessness of the Defendants and not the result of any action or failure to act by the Plaintiff.

12. As a result of the collision, Plaintiff suffered severe and permanent injuries, as are more fully set forth below.

COUNT I
Cindy Nesbeth v. Unknown Driver
Negligence

13. Plaintiff incorporates the foregoing paragraphs of this Complaint as if set forth fully at length herein.

14. The negligence, carelessness of the Defendant, which was the direct cause of the aforesaid motor vehicle collision and the resultant injuries sustained by the Plaintiff, consisted of but are not limited to the following:

- a. Striking Plaintiff's vehicle;
- b. Operating his vehicle into Plaintiff's lane of travel;
- c. Failing to maintain proper distance between vehicles;
- d. Operating said vehicle in a negligent, careless and/or reckless manner without regard for the rights or safety of Plaintiff or others;
- e. Failing to have said vehicle under proper and adequate control;
- f. Operating said vehicle at a dangerous and excessive rate of speed under the circumstances;
- g. Violation of the assured clear distance rule;

- h. Failure to keep a proper lookout;
- i. Failure to apply brakes earlier to stop the vehicle without striking the Plaintiff's vehicle;
- j. Being inattentive to his duties as an operator of a motor vehicle;
- k. Disregarding traffic lanes, patterns, and other devices;
- l. Driving at a high rate of speed which was high and dangerous for conditions;
- m. Failing to remain continually alert while operating said vehicle;
- n. Failing to perceive the highly apparent danger to others which the actions and/or inactions posed;
- o. Failing to give Plaintiff meaningful warning signs concerning the impending collision;
- p. Failing to exercise ordinary care to avoid a collision;
- q. Failing to be highly vigilant and maintain sufficient control of said vehicle and to bring it to a stop on the shortest possible notice;
- r. Operating said vehicle with disregard for the rights of Plaintiff, even though he was aware or should have been aware of the presence of Plaintiff and the threat of harm posed to him;
- s. Continuing to operate the vehicle in a direction towards the Plaintiff's vehicle when he saw, or in the exercise of reasonable diligence, should have seen, that further operation in that direction would result in a collision;

- t. Failing to operate said vehicle in compliance with the applicable laws and ordinances of the Commonwealth of Pennsylvania, pertaining to the operation and control of motor vehicles; and
- u. Being otherwise reckless, careless and/or negligent under the circumstances.

15. As a direct and consequential result of the negligent, careless, and/or reckless conduct of the Defendant, described above, the Plaintiff suffered various serious and permanent personal injuries, serious impairment of bodily function and/or permanent serious disfigurement and/or aggravation of pre-existing conditions, all to Plaintiff's great loss and detriment.

16. As a result of these injuries, all of which are permanent in nature and all of which are to Plaintiff's great financial detriment and loss, Plaintiff has in the past, is presently and may in the future suffer great anguish, sickness and agony and will continue to suffer for an indefinite time into the future.

17. As an additional result of the carelessness, negligence of Defendant, Plaintiff has suffered emotional injuries, along with the physical injuries suffered.

18. As a further result of Plaintiff's injuries, he has in the past, is presently and may in the future undergo a great loss of earnings and/or earning capacity, all to Plaintiff's further loss and detriment.

19. As a direct result of the negligent, careless, and/or reckless conduct of the Defendant, Plaintiff suffered damage to his personal property, including his motor vehicle, which Plaintiff was operating at the time of the aforesaid motor vehicle collision; including but not limited to, storage fees and towing, all to Plaintiff's great loss and detriment.

20. Furthermore, in addition to all the injuries and losses suffered by Plaintiff, Plaintiff has also incurred or will incur medical, rehabilitative and other related expenses in an

amount equal to and/or in excess of the basic personal injury protection benefits required by the Pennsylvania Vehicle Financial Responsibility Law, 75 Pa.C.S. Section 1701, et. Seq., as amended, for which she makes a claim for payment in the present action.

WHEREFORE, Plaintiff, Cindy Nesbeth, prays for judgment in Plaintiff's favor and against Defendant, Unknown Driver, in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, plus all costs and other relief this court deems necessary.

COUNT II
Cindy Nesbeth v. Walmart Stores East, LP
RESPONDEAT SUPERIOR

21. Plaintiff incorporates the foregoing paragraphs of this Complaint as if set forth fully at length herein.

22. The negligence, carelessness of the Defendant, Walmart Stores East, LP, itself and by and through its agent, servant and/or employee, Unknown Driver, acting at all times relevant hereto within the scope of his agency, which was the direct and proximate cause of the aforesaid motor vehicle collision and the resultant injuries sustained by the Plaintiff, consisted of but are not limited to the following:

- a. Striking Plaintiff's vehicle;
- b. Operating his vehicle into Plaintiff's lane of travel;
- c. Failing to maintain proper distance between vehicles;
- d. Operating said vehicle in a negligent, careless and/or reckless manner without regard for the rights or safety of Plaintiff or others;
- e. Failing to have said vehicle under proper and adequate control;
- f. Operating said vehicle at a dangerous and excessive rate of speed under the circumstances;

- g. Violation of the assured clear distance rule;
- h. Failure to keep a proper lookout;
- i. Failure to apply brakes earlier to stop the vehicle without striking the Plaintiff's vehicle;
- j. Being inattentive to his duties as an operator of a motor vehicle;
- k. Disregarding traffic lanes, patterns, and other devices;
- l. Driving at a high rate of speed which was high and dangerous for conditions;
- m. Failing to remain continually alert while operating said vehicle;
- n. Failing to perceive the highly apparent danger to others which the actions and/or inactions posed;
- o. Failing to give Plaintiff meaningful warning signs concerning the impending collision;
- p. Failing to exercise ordinary care to avoid a collision;
- q. Failing to be highly vigilant and maintain sufficient control of said vehicle and to bring it to a stop on the shortest possible notice;
- r. Operating said vehicle with disregard for the rights of Plaintiff, even though he was aware or should have been aware of the presence of Plaintiff and the threat of harm posed to him;
- s. Continuing to operate the vehicle in a direction towards the Plaintiff's vehicle when he saw, or in the exercise of reasonable diligence, should have seen, that further operation in that direction would result in a collision;

- t. Failing to operate said vehicle in compliance with the applicable laws and ordinances of the Commonwealth of Pennsylvania, pertaining to the operation and control of motor vehicles; and
- u. Being otherwise reckless, careless and/or negligent under the circumstances.

23. As a direct and consequential result of the negligent, careless, and/or reckless conduct of the Defendant, described above, the Plaintiff suffered various serious and permanent personal injuries, serious impairment of bodily function and/or permanent serious disfigurement and/or aggravation of pre-existing conditions, all to Plaintiff's great loss and detriment.

24. As a result of these injuries, all of which are permanent in nature and all of which are to Plaintiff's great financial detriment and loss, Plaintiff has in the past, is presently and may in the future suffer great anguish, sickness and agony and will continue to suffer for an indefinite time into the future.

25. As an additional result of the carelessness, negligence and/or recklessness of Defendant, Plaintiff has suffered emotional injuries, along with the physical injuries suffered.

26. As a further result of Plaintiff's injuries, he has in the past, is presently and may in the future undergo a great loss of earnings and/or earning capacity, all to Plaintiff's further loss and detriment.

27. As a direct result of the negligent, careless, and/or reckless conduct of the Defendant, Plaintiff suffered damage to his personal property, including his motor vehicle, which Plaintiff was operating at the time of the aforesaid motor vehicle collision; including but not limited to, storage fees and towing, all to Plaintiff's great loss and detriment.

28. Furthermore, in addition to all the injuries and losses suffered by Plaintiff, Plaintiff has also incurred or will incur medical, rehabilitative and other related expenses in an

amount equal to and/or in excess of the basic personal injury protection benefits required by the Pennsylvania Vehicle Financial Responsibility Law, 75 Pa.C.S. Section 1701, et. Seq., as amended, for which she makes a claim for payment in the present action.

WHEREFORE, Plaintiff, Cindy Nesbeth, prays for judgment in Plaintiff's favor and against Defendant, Walmart Stores East, LP, in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, plus all costs and other relief this court deems necessary.

COUNT III
Cindy Nesbeth v. Walmart Stores East, LP
Negligent Entrustment

29. Plaintiff incorporates the foregoing paragraphs of this Complaint as if set forth fully at length herein.

30. The negligence, recklessness and/or carelessness of the Defendant, which was the proximate cause of the aforesaid motor vehicle collision and the resultant injuries sustained by the Plaintiff, consisted of but are not limited to the following:

- a. Permitting Defendant, Unknown Driver, to operate the motor vehicle without first ascertaining whether or not he was capable of properly operating said vehicle;
- b. Permitting Defendant, Unknown Driver, to operate the motor vehicle when Defendant, Walmart Stores East, LP, knew, or in the exercise of due care and diligence, should have known that Defendant, Unknown Driver, was capable of committing the acts of negligence set forth above;
- c. Failing to warn those persons, including the Plaintiff, that Defendant, Walmart Stores East, LP, knew, or in the existence of due care and diligence

should have known, that the Plaintiff would be exposed to Defendant,

Unknown Driver's negligent operation of the motor vehicle; and

- d. Otherwise negligently entrusting said vehicle to said individual Defendant,
Unknown Driver.

31. As a direct and consequential result of the negligent, careless, and/or reckless conduct of the Defendant, described above, the Plaintiff suffered various serious and permanent personal injuries, serious impairment of bodily function and/or permanent serious disfigurement and/or aggravation of pre-existing conditions, all to Plaintiff's great loss and detriment.

32. As a result of these injuries, all of which are permanent in nature and all of which are to Plaintiff's great financial detriment and loss, Plaintiff has in the past, is presently and may in the future suffer great anguish, sickness and agony and will continue to suffer for an indefinite time into the future.

33. As an additional result of the carelessness, negligence and/or recklessness of Defendant, Plaintiff has suffered emotional injuries, along with the physical injuries suffered.

34. As a further result of Plaintiff's injuries, he has in the past, is presently and may in the future undergo a great loss of earnings and/or earning capacity, all to Plaintiff's further loss and detriment.

35. Furthermore, in addition to all the injuries and losses suffered by Plaintiff, Plaintiff has also incurred or will incur medical, rehabilitative and other related expenses in an amount equal to and/or in excess of the basic personal injury protection benefits required by the Pennsylvania Vehicle Financial Responsibility Law, 75 Pa.C.S. Section 1701, et. Seq., as amended, for which she makes a claim for payment in the present action.

WHEREFORE, Plaintiff, Cindy Nesbeth, prays for judgment in Plaintiff's favor and against Defendant, Walmart Stores East, LP, in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, plus all costs and other relief this court deems necessary.

COUNT IV
Cindy Nesbeth v. Wabash National Corporation
RESPONDEAT SUPERIOR

36. Plaintiff incorporates the foregoing paragraphs of this Complaint as if set forth fully at length herein.

37. The negligence, recklessness and/or carelessness of the Defendant, Wabash National Corporation, itself and by and through its agent, servant and/or employee, Unknown Driver, acting at all times relevant hereto within the scope of his agency, which was the direct and proximate cause of the aforesaid motor vehicle collision and the resultant injuries sustained by the Plaintiff, consisted of but are not limited to the following:

- a. Striking Plaintiff's vehicle;
- b. Operating his vehicle into Plaintiff's lane of travel;
- c. Failing to maintain proper distance between vehicles;
- d. Operating said vehicle in a negligent, careless and/or reckless manner without regard for the rights or safety of Plaintiff or others;
- e. Failing to have said vehicle under proper and adequate control;
- f. Operating said vehicle at a dangerous and excessive rate of speed under the circumstances;
- g. Violation of the assured clear distance rule;
- h. Failure to keep a proper lookout;

- i. Failure to apply brakes earlier to stop the vehicle without striking the Plaintiff's vehicle;
- j. Being inattentive to his duties as an operator of a motor vehicle;
- k. Disregarding traffic lanes, patterns, and other devices;
- l. Driving at a high rate of speed which was high and dangerous for conditions;
- m. Failing to remain continually alert while operating said vehicle;
- n. Failing to perceive the highly apparent danger to others which the actions and/or inactions posed;
- o. Failing to give Plaintiff meaningful warning signs concerning the impending collision;
- p. Failing to exercise ordinary care to avoid a collision;
- q. Failing to be highly vigilant and maintain sufficient control of said vehicle and to bring it to a stop on the shortest possible notice;
- r. Operating said vehicle with disregard for the rights of Plaintiff, even though he was aware or should have been aware of the presence of Plaintiff and the threat of harm posed to him;
- s. Continuing to operate the vehicle in a direction towards the Plaintiff's vehicle when he saw, or in the exercise of reasonable diligence, should have seen, that further operation in that direction would result in a collision;
- t. Failing to operate said vehicle in compliance with the applicable laws and ordinances of the Commonwealth of Pennsylvania, pertaining to the operation and control of motor vehicles; and
- u. Being otherwise reckless, careless and/or negligent under the circumstances.

38. As a direct and consequential result of the negligent, careless, and/or reckless conduct of the Defendant, described above, the Plaintiff suffered various serious and permanent personal injuries, serious impairment of bodily function and/or permanent serious disfigurement and/or aggravation of pre-existing conditions, all to Plaintiff's great loss and detriment.

39. As a result of these injuries, all of which are permanent in nature and all of which are to Plaintiff's great financial detriment and loss, Plaintiff has in the past, is presently and may in the future suffer great anguish, sickness and agony and will continue to suffer for an indefinite time into the future.

40. As an additional result of the carelessness, negligence and/or recklessness of Defendant, Plaintiff has suffered emotional injuries, along with the physical injuries suffered.

41. As a further result of Plaintiff's injuries, he has in the past, is presently and may in the future undergo a great loss of earnings and/or earning capacity, all to Plaintiff's further loss and detriment.

42. As a direct result of the negligent, careless, and/or reckless conduct of the Defendant, Plaintiff suffered damage to his personal property, including his motor vehicle, which Plaintiff was operating at the time of the aforesaid motor vehicle collision; including but not limited to, storage fees and towing, all to Plaintiff's great loss and detriment.

43. Furthermore, in addition to all the injuries and losses suffered by Plaintiff, Plaintiff has also incurred or will incur medical, rehabilitative and other related expenses in an amount equal to and/or in excess of the basic personal injury protection benefits required by the Pennsylvania Vehicle Financial Responsibility Law, 75 Pa.C.S. Section 1701, et. Seq., as amended, for which she makes a claim for payment in the present action.

WHEREFORE, Plaintiff, Cindy Nesbeth, prays for judgment in Plaintiff's favor and against Defendant, Wabash National Corporation, in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, plus all costs and other relief this court deems necessary.

COUNT V
Cindy Nesbeth v. Wabash National Corporation
Negligent Entrustment

44. Plaintiff incorporates the foregoing paragraphs of this Complaint as if set forth fully at length herein.

45. The negligence, recklessness and/or carelessness of the Defendant, which was the proximate cause of the aforesaid motor vehicle collision and the resultant injuries sustained by the Plaintiff, consisted of but are not limited to the following:

- a. Permitting Defendant, Unknown Driver, to operate the motor vehicle without first ascertaining whether or not he was capable of properly operating said vehicle;
- b. Permitting Defendant, Unknown Driver, to operate the motor vehicle when Defendant, Wabash National Corporation, knew, or in the exercise of due care and diligence, should have known that Defendant, Unknown Driver, was capable of committing the acts of negligence set forth above;
- c. Failing to warn those persons, including the Plaintiff, that Defendant, Wabash National Corporation, knew, or in the existence of due care and diligence should have known, that the Plaintiff would be exposed to Defendant, Unknown Driver's negligent operation of the motor vehicle; and
- d. Otherwise negligently entrusting said vehicle to said individual Defendant, Unknown Driver.

46. As a direct and consequential result of the negligent, careless, and/or reckless conduct of the Defendant, described above, the Plaintiff suffered various serious and permanent personal injuries, serious impairment of bodily function and/or permanent serious disfigurement and/or aggravation of pre-existing conditions, all to Plaintiff's great loss and detriment.

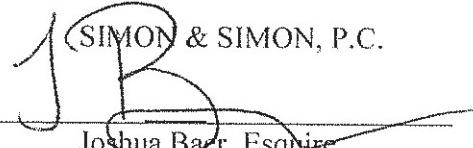
47. As a result of these injuries, all of which are permanent in nature and all of which are to Plaintiff's great financial detriment and loss, Plaintiff has in the past, is presently and may in the future suffer great anguish, sickness and agony and will continue to suffer for an indefinite time into the future.

48. As an additional result of the carelessness, negligence and/or recklessness of Defendant, Plaintiff has suffered emotional injuries, along with the physical injuries suffered.

49. As a further result of Plaintiff's injuries, he has in the past, is presently and may in the future undergo a great loss of earnings and/or earning capacity, all to Plaintiff's further loss and detriment.

50. Furthermore, in addition to all the injuries and losses suffered by Plaintiff, Plaintiff has also incurred or will incur medical, rehabilitative and other related expenses in an amount equal to and/or in excess of the basic personal injury protection benefits required by the Pennsylvania Vehicle Financial Responsibility Law, 75 Pa.C.S. Section 1701, et. Seq., as amended, for which she makes a claim for payment in the present action.

WHEREFORE, Plaintiff, Cindy Nesbeth, prays for judgment in Plaintiff's favor and against Defendant, Wabash National Corporation, in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars, plus all costs and other relief this court deems necessary.

BY: 
Joshua Baer, Esquire

VERIFICATION

I, Cindy Nesbeth, am the plaintiff in this action, and I hereby state that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that this verification is subject to 18 Pa. C.S. § 4904 providing for criminal penalties for unsworn falsification to authorities.

Cindy Nesbeth
Cindy Nesbeth (May 13, 2017)